

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	8:00CR52
)	
Plaintiff,)	
)	
v.)	ORDER
)	
LORENZO AVENDANO-RAMIREZ,)	
)	
Defendant.)	

This matter is before the court on petitioner's motion for a certificate of appealability. Filing No. 87. This court has denied petitioner's motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255. See Filing No. 85.

This habeas corpus action is governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *Slack v. McDaniel*, 529 U.S. 473, 476 (2000) (holding that when a habeas corpus petitioner seeks to initiate an appeal of the dismissal of a habeas corpus petition after the effective date of AEDPA, the right to appeal is governed by the certificate of appealability (COA) requirements now found at 28 U.S.C. § 2253(c)). The AEDPA requires the issuance of a COA before a petitioner can appeal the denial of his § 2255 motion. See 28 U.S.C. § 2253(c). Under section 2253(c), the district court will issue a certificate of appealability only if the applicant has made a substantial showing of the denial of a constitutional right. *Id.* A "substantial showing of the denial of a constitutional right" requires that petitioner demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack*, 529 U.S. at 482. Where a district court has rejected the

constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Id.*

The court has reviewed petitioner's motion for a certificate of appealability and finds, for the reasons stated in its earlier order denying the section 2255 petition, that petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, petitioner's motion for a certificate of appealability will be denied. The petitioner may request a certificate of appealability from the Court of Appeals. See Fed. R. App. P. 22(b).

IT IS ORDERED that petitioner's motion for a certificate of appealability, Filing No. 87, is denied.

DATED this 8th day of June, 2005.

BY THE COURT:

s/Joseph F. Bataillon
JOSEPH F. BATAILLON
UNITED STATES DISTRICT JUDGE